



POLICE DEPARTMENT

April 5, 2018

In the Matter of Charges and Specifications

:

Case No.

- against -

:

2016-15581

Police Officer Jared Dietzel

:

Tax Registry No. 946469

:

75th Precinct

:

At:

Police Headquarters
One Police Plaza
New York, New York 10038

Before:

Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

Ji Jahng, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent:

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To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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Charges and Specifications

- I. Said Police Officer Jared Dietzel, while on-duty and assigned to the 75th Precinct, on November 8, 2015, did use physical force against [REDACTED] without police necessity, to wit: Said Police Officer did punch [REDACTED] in the face. *(As amended)*

P.G. 203-11 now encompassed by P.G. 221-01 &
P.G. 221-02

USE OF FORCE
FORCE GUIDELINES -
TACTICAL OPERATIONS
USE OF FORCE - TACTICAL
OPERATIONS

Summary of Findings

The above-named member of the Department appeared before me on November 2, 2017 and January 16, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Department called Nelson Kimond as a witness. Respondent called Police Officer Judy Beltre as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty.

Analysis

The following is a summary of the facts which are not in dispute in this case.

On November 8, 2015, Respondent and his partner, Police Officer Judy Beltre, at approximately 1350 hours, responded to a radio run which directed them to [REDACTED] Brooklyn, New York. This address is the site of a group home for people with mental disabilities managed by the Thrive Network. When Respondent and Police Officer Beltre arrived at the location, they were met by members of the staff, who advised them that one of their residents, [REDACTED], had bitten a staff member and was violent. They sought Respondent's assistance in taking [REDACTED] to a hospital for psychiatric evaluation.

As Respondent spoke with the staff, he saw [REDACTED] on a staircase; one of the staff members pointed at [REDACTED] and said, "That's him!" Respondent and Police Officer Beltre followed [REDACTED] up the stairs to the second floor, joined by Police Officer Luperon and Sergeant Winter, who also had responded to the radio run. When Respondent arrived on the second floor, he and the other police officers walked to an apartment, which contained a bedroom, in which he observed [REDACTED] lying on a bed. As Respondent entered the bedroom and attempted to obtain [REDACTED]'s acquiescence to being taken to the hospital for evaluation, a physical confrontation ensued, the facts of which are in dispute. [REDACTED] struggled against the police officers and did not willingly permit himself to be handcuffed. During the confrontation, Police Officer Beltre injured her hand with her handcuffs and Police Officer Keegan was bitten by [REDACTED]. Sergeant Winter contemplated using a Taser to subdue [REDACTED] but elected not to do so after being advised that [REDACTED] was prone to seizures. Respondent used his asp during the struggle. Police officers from an Emergency Services Unit, as well as other officers from the 75th Precinct, responded to the location and assisted in [REDACTED]'s detention.

Once [REDACTED] was handcuffed, Respondent transported him to Brookdale Hospital for psychological evaluation. [REDACTED] was released the next day and returned to the [REDACTED] residence. [REDACTED] sustained a contusion to his lip, abrasions on his arms, and bruises on his neck.

The following is a summary of the trial testimony.

1. Kimond Nelson

Kimond Nelson testified that he is a direct support professional employed by Thrive Network to work with developmentally disabled clients; Nelson works at the group home located at [REDACTED] in Brooklyn, New York (T. 14-15). Nelson's sole responsibility was providing support to [REDACTED] (T. 16, 17). [REDACTED] is autistic, in addition to being

nonverbal (T. 17, 38). Nelson's support activities included helping [REDACTED] shower, cooking meals for him and escorting him from the group home for recreation (T. 18). Nelson provided these services for [REDACTED] five days per week, during eight-hour shifts (T. 18-19).

On November 8, 2015, at approximately 1350 hours, Nelson's supervisor contacted police for assistance, as [REDACTED] was biting himself, banging his shoulders against a wall and stamping his feet against a wall (T. 33-35). At the time of this incident, [REDACTED] was 5'1" tall and weighed approximately 150 pounds (T. 33). Prior to the arrival of the police, [REDACTED] struck Nelson with an open hand in a manner that Nelson described as "swatting" (T. 36). Instead of speaking, [REDACTED] makes humming sounds (T. 38). Nelson testified that [REDACTED] behavior had continued for approximately 20 minutes as he and other staff members attempted to calm him (T. 39). Nelson had also attempted to forcibly bring [REDACTED] to the ground and hold his arms in an effort to calm him; this effort was unsuccessful because [REDACTED] did not stay on the ground and resumed his previous behavior once he was back on his feet (T. 40-41).

When the police arrived at the residence approximately eight minutes later, [REDACTED] was upstairs (T. 42). Nelson was on the first floor of the location and could hear [REDACTED] stamping his feet against a wall and humming (T. 43). According to Nelson, no one from the Thrive Network spoke to Respondent and Police Officer Beltre once they arrived; Nelson later opened the door for the Sergeant and Police Officer Luperon, who asked where to go (T. 44). Nelson pointed upstairs and the police officers proceeded to the second floor (*Id.*). The four police officers went to [REDACTED] two-bedroom apartment, where they found him in a bedroom at the rear of the apartment (T. 44-45). Nelson described the dimensions of [REDACTED] bedroom as approximately 300 square feet (T. 45).

According to Nelson, [REDACTED] was lying on his bed with a cover over his face (T. 46). Nelson stood at the doorway to the bedroom between the four police officers, who were inside

room and two co-workers, [REDACTED], who stood behind him in [REDACTED] living room (T. 46-47). Nelson testified that the police officers were trying to handcuff [REDACTED] while he lay on his bed but [REDACTED] pulled his arms away, turning his torso back and forth (T. 47-48, 50-51). According to Nelson, [REDACTED] would sometimes engage in behaviors such as swinging his hands or "swatting," as well as snapping his teeth, which might appear to be aggressive, but which were not intended to harm anyone (T. 73). Nelson conceded that he did not relate that background to police officers when they arrived at the house (T. 71-72, 73-74). Nelson asserted that he warned Sergeant Winter not to use her Taser on [REDACTED] because he suffered from seizures (T. 74, 84).

According to Nelson, after the police officers tried unsuccessfully to handcuff [REDACTED], Respondent threw four punches toward [REDACTED] with his right fist, two of which connected with [REDACTED]'s face (T. 48-49, 50, 52, 114). Nelson claimed he was three feet away from [REDACTED] at the time Respondent punched him (T. 51-52). Two of Nelson's co-workers, [REDACTED] [REDACTED], were standing behind him (T. 94-95, 97). While Nelson claimed that there were no obstructions to his line of sight, he denied seeing Respondent use his asp to strike [REDACTED] on his arm or any other part of his body (T. 83). Nelson further denied that any of the three police officers in the room with Respondent ever blocked his vantage point at the doorway but then conceded that any one of them could have done so "for a split second" (T. 91-92).

Nelson claimed that after Respondent punched [REDACTED] [REDACTED] began biting the insides of Respondent's arms (T. 53). According to Nelson, Respondent then took a baton and placed it against [REDACTED] chest, close to his neck (*Id.*) Nelson asserted that while he saw [REDACTED] bite a police officer on his finger, there were no other police officers injured during the struggle with [REDACTED] (T. 54, 57-58). While Nelson testified at trial that he saw [REDACTED]'s actions as resisting being arrested rather than putting up a fight, he admitted that in his November 17, 2015,

statement to CCRB, he described [REDACTED]'s actions as "putting up a fight" (T. 80). Finally, Nelson claimed that [REDACTED] never got off his bed to stand up until he was handcuffed and led from the apartment (T. 103).

Nelson claimed that he reported Respondent's alleged misconduct to the director of the program (T. 58). [REDACTED] was taken to [REDACTED] Hospital and returned to the group home the next day (T. 59). According to Nelson, he observed that [REDACTED] had a contusion on his lip, bruises on his neck, and bruises on his wrists (*Id.*). Nelson identified Department Exhibits 1 through 5 as photographs he took of [REDACTED]'s face the day after the incident.

2. [REDACTED]

The tribunal admitted the December 1, 2015, hearsay statement of [REDACTED] into evidence (CCRB Ex. 6, 6A). [REDACTED] claimed that he was in the bedroom with [REDACTED] when the police entered (CCRB 6A at 6). According to [REDACTED], [REDACTED] was lying on his back on his bed when the police surrounded the bed, grabbing his arms and legs (*Id.* at 8). [REDACTED] began moving his arms and kicking, so the police moved the bed to the middle of the room while continuing to struggle with him (*Id.* at 8-9). According to [REDACTED], Respondent placed his hands on either side of [REDACTED] head; while he did so, [REDACTED] turned his head and apparently bit him (*Id.* at 11). [REDACTED] estimated that the police officers were struggling with [REDACTED] for approximately five minutes before he bit Respondent (*Id.*). [REDACTED] claimed that he heard Respondent shout, "He bit me," then saw him punch [REDACTED] in his face approximately three times (*Id.* at 12-13). After Respondent supposedly punched [REDACTED], [REDACTED] claimed that the other police officers directed him to leave [REDACTED]'s bedroom (*Id.* at 13).

In his statement, [REDACTED] first claimed that "they pulled out their batons and started choking him, and they had their knees on his back" (*Id.* at 3). [REDACTED] then claimed another Caucasian police officer took out his baton and pressed it against [REDACTED]'s neck with his left

hand for approximately 30 seconds as he lay face-up on his bed (*Id.* at 13-14, 16-17). This same police officer was trying to grab [REDACTED] with his right hand (T. 16). The officers were still attempting to handcuff [REDACTED] and struggled for "another minute or two" before they were able to do so (*Id.* at 17). [REDACTED] claimed that when [REDACTED] put his hands behind his back as he lay on his back, the police officer placed handcuffs on him (*Id.*). According to [REDACTED], police officers also cuffed [REDACTED] feet because he was still kicking (*Id.*).

3. [REDACTED]

The tribunal admitted the December 7, 2015, hearsay statement of [REDACTED] into evidence (CCRB Ex. 6, 6B). According to [REDACTED], [REDACTED] was on his bed, surrounded by police officers, being told to "Come on," by one of the officers (CCRB Ex. 6B at 3). As [REDACTED] put his hands up, [REDACTED] claimed that a police officer who had his handcuffs out began punching him (*Id.* at 4). [REDACTED] described this officer as "beating [REDACTED] with his, with the handcuffs in his fists" (*Id.* at 5, 22-23). Another officer who was standing near the head of the bed grasped [REDACTED]'s head in both hands; [REDACTED] turned his head and bit the officer (*Id.* at 4). According to Coles, the Sergeant then called for assistance and "what was three police officers became 20" (*Id.*). While the police officers waited for assistance, Respondent grabbed [REDACTED] wrist while the officer who had been bitten grabbed [REDACTED] by his shirt and flung him to the floor, face down (*Id.* at 25). [REDACTED] eventually "calmed down" and was rolled into his stomach so that he could be handcuffed (*Id.*). Police Officer Beltre injured her finger as she attempted to cuff [REDACTED]'s wrists (*Id.*). [REDACTED] then asserted for the first time that the officer "that had been punched in the face took out his baton and then put it across [REDACTED] neck" (*Id.* at 26, 29). [REDACTED] later described the officer with his baton across [REDACTED] neck as the officer who had been bitten, then finally described him as the officer who had punched [REDACTED] (*Id.* at 27-28).

█████ asserted that police officers from the Emergency Services Unit, including one police officer who had responded to the location in the past to deal with █████ placed him in a "body bag" (*Id.* at 5). The police officers took █████ down to an ambulance for transport to a hospital (*Id.*).

█████ initially stated that he did not provide any information to the police officers regarding █████ psychological or medical conditions, other than to caution Sergeant Winter against using a Taser because █████ was prone to seizures (*Id.* at 12). █████ later asserted that he told the police officers, "It's not like we didn't tell you, we didn't inform you until after, like the fight broke out. We told you from the beginning that █████ was on 'a lot of medications'" (*Id.* at 21). █████ asserted that █████ resisted because "he doesn't know any better" (*Id.* at 20). █████ later asserted that he tried talking to █████, telling him, "Let them put the handcuffs on you; I'm not gonna leave you . . ." (*Id.* at 22).

4. Police Officer Judy Beltre

Police Officer Beltre testified that she was aware that █████ is a residence for emotionally disturbed persons, as she had been to the location twice before the date in question (T. 127). When she arrived at the location with Respondent, they were told that █████ had bitten one of the staff members (*Id.*, 139). Police Officer Beltre asked what █████ condition was and was told that █████ was autistic, nonverbal, bipolar and very violent (*Id.* at 127, 130).

When Beltre and Respondent walked into █████ bedroom, he was lying on his bed, while making grunting sounds, then jumped up and started waving his arms toward them (T. 130, 140, 156). Beltre testified that █████ punched her arm before she grabbed his wrist so that she could handcuff him (T. 131, 142). Beltre saw Respondent draw back from █████ withdraw his asp, then strike █████ legs without apparent effect (T. 133-134, 150). Beltre never saw

Respondent employ his asp in any manner other than to strike at [REDACTED] legs (T. 135, 157). Beltre asserted that [REDACTED] was punching Respondent and she lost control of [REDACTED]s arm, resulting in her handcuff cutting her hand (T. 131). Beltre stepped back away from [REDACTED] and left Respondent attempting to gain control of [REDACTED] arms on his own (T. 132). [REDACTED] continued throwing punches, swinging his arms and making noises (T. 133). Beltre also saw Police Officer Luperon go into [REDACTED] bedroom to assist Respondent (T. 135). Beltre testified that other officers from the 75th Precinct, as well as officers from an Emergency Services Unit responded to the location and rendered assistance to Respondent (T. 135-136, 146-147). Beltre saw Police Officer Keegan leave the bedroom with a bite wound on his hand, which was bleeding (T. 136). Beltre testified that after [REDACTED] jumped off his bed and began swinging his hands at her, he was never on his bed again (T. 151-152).

5. Respondent

Respondent testified that he had responded to hundreds of emotionally disturbed person calls over the course of his career (T. 161). He received training in this area at the Police Academy and at John Jay College (T. 162). Respondent was also aware that [REDACTED] was the location of a home for emotionally disturbed individuals, although he had never responded to that location before November 8, 2015 (T. 163). Upon his arrival at the location, Respondent was met outside by staff members from the Thrive Network, who advised him that [REDACTED] was irate, punching holes in the walls, and acting aggressively (*Id.*). The staff asked Respondent to transport [REDACTED] to a hospital for a psychiatric evaluation (T. 163-164).

As Respondent entered the location, he saw [REDACTED] on a staircase; the staff pointed him out to Respondent and [REDACTED] ran up the stairs to the second floor (T. 164). After following [REDACTED] to his bedroom, Respondent saw him lying on his bed making noises (*Id.*). Respondent entered the bedroom with Police Officers Beltre and Luperon; Sergeant Winter remained by the

doorway to the bedroom (T. 165). According to Respondent, the staff members were outside the bedroom (*Id.*).

As Respondent entered the bedroom, he attempted to speak to [REDACTED] asking him what was going on, but he was unresponsive (T. 166). Respondent then told [REDACTED] he would have to come with them; [REDACTED] sprang up from the bed onto his feet, swinging his arms and snapping his teeth (T. 166-167). Respondent attempted to grab [REDACTED] arm to handcuff him but [REDACTED] pulled his hands away (T. 167). Respondent described [REDACTED] as having a medium build, weighing approximately 150 pounds and being very strong (T. 167-168). As [REDACTED] swung his arms back and forth, he struck Respondent's chest and arms (T. 168, 172, 214). As Respondent struggled with [REDACTED], he heard Police Officer Beltre shout that her hand had been caught in her handcuffs and was cut (*Id.*). Officer Beltre eventually left the bedroom while Respondent continued to struggle with [REDACTED]. Respondent first used an arm bar unsuccessfully, then used his asp to strike [REDACTED] on his calves, and finally struck [REDACTED] on his arms (T. 169, 211). Police Officer Luperon moved into the bedroom to assist Respondent after Police Officer Beltre withdrew (T. 169-170). Respondent estimated his height and weight as 5'9", 225 pounds and Police Officer Luperon's as 6', 250 pounds (T. 170). Respondent and Police Officer Luperon continued to struggle with [REDACTED] for about a minute before Police Officer Keegan and his partner arrived to assist them (T. 170-171). Respondent testified that Police Officer Keegan was bitten on his hand during the struggle (T. 171, 213). [REDACTED] continued to struggle and attempted to bite the police officers until he was handcuffed (T. 172).

When asked whether he ever punched [REDACTED], Respondent asserted, "I might have. I am not sure. We were in a big struggle with him and his hands were going all over the place. I might have hit him on the arm, you know. I might have hit him" (T. 172). When asked again if

he punched [REDACTED] Respondent answered, "I might have . . . I was in a struggle with him. I might have punched him in the struggle but I'm not sure" (T. 174).

In response to a question from the tribunal, Respondent asserted that his mindset upon encountering [REDACTED] was initially to evaluate him to determine whether he was going to be violent but once [REDACTED] "sprung [sic] up and came at us, we had to take police action. We had to put him in handcuffs as safely and as fast as possible for our safety and the staff members' safety" (T. 219).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. When hearsay statements are part of the record, particular attention must be paid to the evidence. This tribunal has held many times that while hearsay is admissible in administrative proceedings, and may be the sole basis for a finding of fact, it must be carefully evaluated before it is relied upon. The more important the evidence is to the case, the more critically it should be assessed (*Police Department v. Acosta*, OATH Index No. 464/00 [Jan. 7, 2000]). Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]).

I find Respondent's testimony to be mostly credible, even considering his interest in the outcome of this case. While Respondent did not directly admit to punching [REDACTED], he did not attempt to deny doing so, admitting that he could well have punched him during the struggle in his bedroom. Respondent did admit using his asp to attempt an arm bar, as well as using the asp to strike [REDACTED] on his legs and arms. I consider Respondent's assertions regarding the use of his asp to be statements against penal interest, which weigh in favor of his credibility. Finally, the portions of Respondent's testimony regarding the resistance presented by [REDACTED] and the

sequence of the measures Respondent admitted using to meet that resistance, were corroborated by Beltre's testimony.

I find Police Officer Beltre's testimony credible, as it was logical, forthright and consistent with other credible evidence in the case. She is a disinterested witness in this proceeding whose demeanor at trial was consistent with a desire to provide a candid recitation of the events as they transpired. As set forth above, Police Officer Beltre's testimony corroborates Respondent's testimony regarding [REDACTED] resistance, Police Officer Keegan's bite wound and Respondent's use of his asp.

I find Nelson's testimony to be somewhat credible, based upon his vantage point at the door to the bedroom and the corroboration of several of his factual assertions by Respondent's witnesses. Nevertheless, I find that Nelson's recounting of the incident has several material omissions which limit the probative value of his account. Nelson's apparent equivocation at whether [REDACTED] was simply resisting arrest or "putting up a fight" evinces a significant degree of bias in favor of [REDACTED] which is understandable considering Nelson's position as his caretaker. This bias might also explain his assertion that the entire struggle with [REDACTED] occurred as he lay on his bed, in contrast with the credible accounts of Respondent and Beltre, which describe the struggle as occurring while [REDACTED] was standing up and eventually as he was brought to the ground.

Nelson's chief allegation, that Respondent punched [REDACTED] in his face four times, was not refuted by either Respondent or Beltre; I do not, however, credit Nelson's assertion that [REDACTED] was punched while he was lying on his bed. Nelson's assertion that Respondent placed his baton across [REDACTED]'s chest after [REDACTED] started to bite the insides of Respondent's arms is dubious. Nelson's testimony that he never saw Respondent use his asp to strike [REDACTED] is difficult to reconcile with Respondent's admission to doing so and Nelson's close proximity to

the struggle. Based upon the aforementioned factors, I find Nelson credible on the assertion that Respondent punched [REDACTED] but not on the timing of the blows or [REDACTED] location when the blows were struck.

Similarly, I find [REDACTED] statement unreliable, in that his recounting of the events in this case was colored by his status as [REDACTED]'s caregiver. [REDACTED] initially asserted that he provided no information about [REDACTED]'s condition to Respondent and the police officers who responded to the location; later in his statement, he asserted that he admonished the police officers for their treatment of [REDACTED] saying, "[w]e told you from the beginning that [he] was on a lot of medication." The foregoing statements evince an apparent bias in favor of [REDACTED] which could explain [REDACTED] recounting the events from a perspective which emphasized [REDACTED] psychological deficits as opposed to his physical actions on the date of the incident.

[REDACTED] assertion that Respondent punched [REDACTED] while holding his handcuffs in the same fist appears to be embellished, considering neither of the other Department witnesses made that claim. The tribunal's concerns about [REDACTED] possible bias and embellishment are magnified by the absence of an opportunity to attempt to reconcile the discrepancies during cross-examination under oath. Accordingly, I find [REDACTED] statement unreliable and therefore lacking in probative value.

Similarly, I find [REDACTED] statement to be unreliable, based upon material inconsistencies between his factual assertions and other credible testimony at trial, as well as other credible evidence in the case. First, [REDACTED] placed himself inside [REDACTED] bedroom, whereas Nelson and Respondent placed him outside the bedroom, standing behind Nelson. Second, [REDACTED] asserted that [REDACTED] bit Respondent, after which Respondent punched [REDACTED] several times. Respondent never alleged that [REDACTED] had bitten him, an assertion which, on its face, would tend to support his claim that force was justified in order to handcuff [REDACTED]. This

assertion also suggests that [REDACTED] may have confused Police Officer Keegan, who was bitten, with Respondent, casting further doubt upon the accuracy of his observations. Third, [REDACTED]'s assertions that the police officers choked [REDACTED] with their batons while kneeling on his back, and that one of the police officers placed a baton across [REDACTED] neck as he lay face up for approximately 30 seconds, are dubious. Neither of the other Department witnesses alleged that [REDACTED] was choked by any police officer, let alone by several using their batons. Finally, as with the other Department witnesses, [REDACTED] is one of [REDACTED]'s caregivers, providing a strong incentive to recount the events from a point of view favorable to [REDACTED]. None of the above-described credibility issues were examined in the crucible of cross-examination. Accordingly, for all the foregoing reasons, I find [REDACTED] statement unreliable.

The Patrol Guide is controlling in this case. Section 203-11 sets forth the standards for when the use of force is necessary to achieve legitimate policing goals. It specifically requires that members of service "at the scene of an incident" use the "minimum force" needed and that they "employ non-lethal alternatives, as appropriate." Section 203-11 warns uniformed members of service that "excessive force will not be tolerated."

Even when Members of Service are engaged in a non-enforcement role, they are still constrained by the Department's use of force guidelines. The issue in this case is whether the force used to acquire physical control of Dubose's person (i.e., punching him in his face) was necessary from Respondent's perspective; by a preponderance of the credible, relevant evidence, I find that it was.

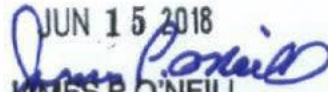
The staff at Direct Support Professionals sought the assistance of police officers to have [REDACTED] forcibly removed from the group home and taken to a hospital for psychiatric evaluation. These professionals communicated to Respondent and his partner, Police Officer Beltre, that

██████ (1) was autistic; (2) suffered from bipolar disorder; (3) was violent; and (4) had bitten a staff member.

Respondent testified that ██████ jumped off the bed he was lying on and began swinging his arms at the police officers, including Respondent. ██████ struck Respondent's chest and arms while Police Officer Beltre attempted to restrain his right arm. Police Officer Beltre had to disengage from the struggle with ██████ after she injured her hand trying to handcuff him. Police Officer Keegan joined the struggle in an attempt to gain control of ██████'s person but he also was forced to withdraw after ██████ bit him. Respondent admitted using an arm bar to restrain ██████ unsuccessfully, then striking ██████ several times with an asp on his legs and on his arm, also unsuccessfully. Sergeant Winter contemplated using her Taser to subdue ██████ but chose to exercise forbearance, given his history of seizures.

Based upon: (1) Respondent's inability to effectively communicate with ██████ (2) ██████'s physically aggressive posture and sustained resistance; (3) the use of an asp to strike at ██████'s legs and arms with no apparent effect; (4) the unavailability of a Taser as a progressive measure to prevent further collateral injury; and (5) the successive injuries to two police officers, it was reasonable from Respondent's perspective to escalate the force from the tactics he had already used to the force he did actually engage in, in order to overcome the resistance ██████ presented at the time the force was employed. In view of the foregoing, I find that the Department has failed to meet its burden of proof by a preponderance of the relevant, credible evidence. I therefore find Respondent Not Guilty.

APPROVED

JUN 15 2018

JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials